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**Triple County Electric, Inc. d/b/a Tri-County Electric and International Brotherhood of Electrical Workers, Local 890, AFL-CIO. Case 30-CA-13735**

October 10, 1997

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS FOX AND  
HIGGINS

Upon a charge filed by the Union on March 27, 1997, the General Counsel of the National Labor Relations Board issued a complaint on June 27, 1997, against Triple County Electric, Inc. d/b/a Tri-County Electric, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint,<sup>1</sup> the Respondent failed to file an answer.

On September 5, 1997, the General Counsel filed a Motion for Summary Judgment with the Board. On September 9, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated July 31, 1997, notified the Respondent that unless an answer were received by August 7, 1997, a Motion for Summary Judgment would be filed.

Although the Region was notified by notices dated July 24, 1997, that Respondent Tri-County Electric and/or Triple County Electric had commenced bankruptcy proceedings, it is well established that the insti-

<sup>1</sup> Although the General Counsel's motion indicates the complaint was served by certified mail on the Respondent but was returned to the Regional Office unclaimed, failure, or refusal to accept service cannot defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). Furthermore, the complaint was served on Respondent's bankruptcy counsel by certified mail, and personally served on Steven C. Wellnitz, the Respondent's owner.

tution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *id.*, and cases cited therein.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a corporation with an office and place of business at Janesville, Wisconsin, has been an electrical contractor in the construction industry doing residential, commercial, and office construction. During the year ending December 31, 1996, the Respondent, in conducting its operations, purchased and received goods and materials at its facility in Janesville, Wisconsin, valued in excess of \$50,000 from distributors and suppliers located within the State of Wisconsin, which had received these goods directly from points outside the State of Wisconsin. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

All electricians employed by the Respondent, but excluding guards and supervisors as defined in the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9(a) of the Act.

On May 21, 1992, the Respondent entered into a letter of assent to the collective-bargaining agreement between the Union and Janesville-Beloit Div., Wisconsin Chapter, NECA, Inc. effective March 1, 1992, and agreed to be bound to such future agreements unless timely notice was given. The Respondent, an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the unit without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective for the period March 1, 1995, to March 1, 1998 (the 1995-1998 agreement).

Since about September 1996, and continuing to date, the Respondent has repudiated the 1995-1998 agreement and has failed to adhere to its terms, including, but not limited to, failing to contact the Union as the

sole and exclusive source of referrals of applicants for employment of unit employees and failing to pay its unit employees the wages and benefits provided in the 1995–1998 agreement. The Respondent engaged in this conduct without prior notice to the Union, and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.

#### CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the limited exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has repudiated the 1995–1998 agreement and has failed to adhere to its terms, including, but not limited to, failing to contact the Union as the sole and exclusive source of referrals of applicants for employment of unit employees and failing to pay its unit employees the wages and benefits provided in the 1995–1998 agreement, we shall order the Respondent to comply with these terms and conditions of the 1995–1998 collective-bargaining agreement with the Union for the period from March 1, 1995, through March 1, 1998, and to make whole its unit employees for any loss of earnings and benefits and expenses ensuing from its failure to comply with these terms and conditions of the 1995–1998 agreement since about September 1996.

Specifically, we shall order a reinstatement and backpay remedy for those applicants who would have been referred to the Respondent were it not for the Respondent's failure to contact the Union as the sole and exclusive source of referrals of applicants for employment of unit employees as provided in the 1995–1998 agreement. *J. E. Brown Electric*, 315 NLRB 620 (1994).<sup>2</sup> The Respondent will have the opportunity to introduce evidence on reinstatement and backpay issues at the compliance stage. *Id.* Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

<sup>2</sup>Member Higgins does not pass on whether he agrees with the majority view in *J. E. Brown*. Rather, in the absence of a contest on any issue (i.e., in this “no answer” case), Member Higgins agrees, for institutional reasons, to adhere to the majority view in *J. E. Brown*.

In addition, we shall order the Respondent to make the unit employees whole for any loss of earnings attributable to its failure to pay its unit employees wages in accord with the 1995–1998 agreement since about September 1996. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, *supra*.

Finally, we shall order the Respondent to make whole its unit employees for its failure to pay any other benefits in accord with the 1995–1998 agreement since about September 1996, including making any delinquent contributions to fringe benefit funds, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), *enfd.* 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, *supra*, with interest as prescribed in *New Horizons for the Retarded*, *supra*.<sup>3</sup>

#### ORDER

The National Labor Relations Board orders that the Respondent, Triple County Electric, Inc. d/b/a Tri-County Electric, Janesville, Wisconsin, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Repudiating the 1995–1998 agreement between International Brotherhood of Electrical Workers, Local 890, AFL–CIO, and Janesville-Beloit Div., Wisconsin Chapter, NECA, Inc. or failing to adhere to its terms, including, but not limited to, failing to contact the Union as the sole and exclusive source of referrals of applicants for employment of unit employees or failing to pay its unit employees the wages and benefits provided in the 1995–1998 agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

##### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with all the terms and conditions of the 1995–1998 agreement, including, but not limited to, requiring the Respondent to contact the Union as the sole and exclusive source of referrals of applicants for

<sup>3</sup>To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

employment of the following unit employees and to pay the unit employees contractual wages and benefits:

All electricians employed by the Respondent, but excluding guards and supervisors as defined in the Act.

(b) Make whole the unit employees for any loss of earnings and benefits and expenses ensuing from its failure to comply with the terms and conditions of the 1995–1998 agreement since about September 1996 in the manner set forth in the remedy section of this decision.

(c) Offer immediate and full reinstatement to those applicants who would have been referred to the Respondent were it not for the Respondent's failure to contact the Union as the sole and exclusive source of referrals of applicants for employment of unit employees as provided in the 1995–1998 agreement and make them whole, with interest, in the manner set forth in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Janesville, Wisconsin, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 24, 1997.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region

attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 10, 1997

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William B. Gould IV, Chairman

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Sarah M. Fox, Member

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John E. Higgins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT repudiate the 1995–1998 agreement between International Brotherhood of Electrical Workers, Local 890, AFL–CIO, and Janesville-Beloit Div., Wisconsin Chapter, NECA, Inc. or fail to adhere to its terms, including, but not limited to, contacting the Union as the sole and exclusive source of referrals of applicants for employment of unit employees and paying our unit employees the wages and benefits provided in the 1995–1998 agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL comply with the terms and conditions of the 1995–1998 collective-bargaining agreement, including, but not limited to, contacting the Union as the sole and exclusive source of referrals of applicants for employment of the following unit employees and paying the unit employees contractual wages and benefits:

All electricians employed by us, but excluding guards and supervisors as defined in the Act.

WE WILL make whole the unit employees for any loss of earnings and benefits and expenses ensuing from our failure to comply with the terms and conditions of the 1995–1998 agreement since about September 1996 in the manner set forth in a decision of the National Labor Relations Board.

<sup>4</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL offer immediate and full reinstatement to those applicants who would have been referred to us were it not for our failure to contact the Union as the sole and exclusive source of referrals of applicants for employment of unit employees as provided in the 1995–1998 agreement and WE WILL make them whole,

with interest, in the manner set forth in a decision of the National Labor Relations Board.

TRIPLE COUNTY ELECTRIC, INC. D/B/A  
TRI-COUNTY ELECTRIC